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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following report of the Joint Committee on the Bill to recognize and vest, the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in forest for generations but whose right could not be recorded and to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land, was presented to Lok Sabha on 23 May, 2006:—

COMPOSITION OF THE COMMITTEE

Shri V. Kishore Chandra S. Deo — *Chairman*

MEMBERS

Lok Sabha

2. Shri Shingada Damodar Barku
3. Shri Mahavir Bhagora
4. Shri C.K. Chandrappan
5. Shri Giridhar Gamang
6. Dr. P.P. Koya
7. Shri A. Krishnaswamy
8. Shri Shailendra Kumar

9. Shri Rajesh Kumar Manjhi
10. Shri Babu Lal Marandi
11. Shri Madhusudan Mistry
12. Shri Hemlal Murmu
13. Shri Jual Oram
14. Shri Baju Ban Riyan
15. Shri Nand Kumar Sai
- @16. Dr. Babu Rao Mediyam
17. Shri Sugrib Singh
18. Shri Rajesh Verma
19. Shri Ravi Prakash Verma
20. Shri P.R. Kyndiah

Rajya Sabha

21. Shri Rishang Keishing
22. Dr. Radhakant Nayak
23. Smt. Brinda Karat
24. Shri Devdas Apte
25. Shri Ravula Chandra Sekar Reddy
26. Shri N. Jothi
27. Shri Mangani Lal Mandal
28. Shri Nand Kishore Yadav
29. **
30. **

SECRETARIAT

- | | | |
|----------------------------|---|-----------------------------------|
| 1. Shri R.C. Ahuja | - | <i>Joint Secretary</i> |
| 2. Shri R.K. Bajaj | - | <i>Deputy Secretary</i> |
| 3. Shri J.K. Jena | - | <i>Under Secretary</i> |
| 4. Shri J.V.G. Reddy | - | <i>Under Secretary</i> |
| 5. Shri K.R. Narendra Babu | - | <i>Executive Officer</i> |
| 6. Shri D.K. Arora | - | <i>Senior Executive Assistant</i> |

REPRESENTATIVES OF MINISTRY OF TRIBAL AFFAIRS

- | | | |
|-------------------|---|------------------------|
| Ms. Meena Gupta | - | <i>Secretary</i> |
| Shri Rajeev Kumar | - | <i>Joint Secretary</i> |

REPRESENTATIVES OF THE MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)

- | | | |
|-----------------------|---|--------------------------------------------------|
| Shri N.K. Nampoothiry | - | <i>Joint Secretary & Legislative Counsel</i> |
| Shri S. Sreenivas | - | <i>Assistant Legislative Counsel</i> |

@ Appointed w.e.f. 21.2.2006 vice Adv P. Satheedevi resigned.

** Vacant vice Sarvashri Moolchand Meena and Birbhadra Singh ceased to be members of the Committee on retirement from Rajya Sabha w.e.f. 3 April, 2006.

REPORT OF THE JOINT COMMITTEE ON THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005

I, the Chairman of the Joint Committee to which the Bill* viz the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was referred, having been authorised to submit the Report on their behalf, present this Report with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on 13 December, 2005. The motion for reference of the Bill to a Joint Committee of both the Houses of Parliament was moved in Lok Sabha on 21 December, 2005 by Shri P.R. Kyndiah, the Minister of Tribal Affairs and was adopted by the House (**Appendix-I**)

3. The Rajya Sabha concurred in the said motion on 23 December, 2005 (**Appendix-II**)

4. The message from Rajya Sabha was published in Lok Sabha Bulletin Part-II dated 26 December, 2005.

5. The Committee held 14 sittings in all.

6. At their first sitting held on 16.1.2006, the Committee held general discussion on the various provisions of the Bill and noted the importance and urgency of the task before the Committee. The Committee also had a briefing of the representatives of the Ministry of Tribal Affairs on the Bill under reference and the need to enact it. Considering the sensitive issue which required thorough and comprehensive study, the Committee decided that a press communique might be issued in all national dailies and other leading newspapers inviting memoranda from experts, organizations, associations, NGOs and general public on the various provisions of the Bill. The Committee also decided that the contents of the press communique be given wide publicity through All India Radio and Doordarshan. The Chairman also requested the members to give their written opinions/suggestions besides suggesting the names of organizations/individuals from whom memoranda might be invited.

7. A press communique inviting memoranda and requests for oral evidence before the Committee was issued accordingly in national dailies and regional newspapers and the matter was given wide publicity through All India Radio and Doordarshan.

8. As per the decision taken by the Committee, letters inviting memoranda containing suggestions/comments on the provisions of the Bill were also issued to all the State Governments/Union Territory Administrations.

9. At their second sitting held on 27 January, 2006, the Committee heard the views of the representatives of the Ministry of Environment and Forests on the various provisions of the Bill. The Committee also desired that the Ministry of Environment and Forests furnish to them copies of various guidelines/circulars/directives, etc., issued by them under the Forest (Conservation) Act, 1980.

10. At their third sitting held on 7 February, 2006, the Committee heard the views of the representatives of the Ministries of (i) Social Justice and Empowerment; (ii) Rural Development (Department of Land Resources); and (iii) Panchayati Raj, on various provisions of the Bill.

11. The Report of the Committee was to be presented by the last day of the Second week of Budget Session, 2006. As the Committee had to complete the work of taking evidence and clause by clause consideration, the Committee decided to seek extension of time for presentation of the report. The Committee was granted extension of time to present the Report by the last day of the Budget Session, 2006. The Committee also desired that they might undertake as on the spot study visit to various parts of the country to elicit the views of the representatives of various organizations, associations and general public on the various

*Published in the Gazette of India, Extraordinary Part-II, Section 2 dated 13.12.2005.

clauses of the Bill. However due to time constraints the Committee could not undertake on-the-spot study visits.

12. The Bill as introduced in the House on 13 December, 2005 is enclosed (**Appendix-III**)

13. In all 109 memoranda containing comments/suggestions on the various provisions of the Bill were received by the Committee from various associations/organizations/NGOs/experts and individuals etc. (**Appendix-IV**)

14. At their sittings held on 3.3.2006, 9.3.2006, 10.3.2006, 23.3.2006, 24.03.2006, 17.4.2006, 18.4.2006 and 19.4.2006, the Committee took oral evidence of the representatives of various organizations/associations/NGOs/experts/individuals, etc. A list of organizations/associations/NGOs etc. who tendered their oral evidence before the Committee is enclosed. (**Appendix-V**)

15. The Committee undertook clause-by-clause consideration of the provisions of the Bill on the basis of amendments suggested by the Members of the Committee, at their sittings held on 8 and 9 May, 2006.

16. At their sitting held on 19 May, 2006 the Committee considered and adopted their draft Report and authorised the Chairman to present the report on their behalf. The Committee also decided that (i) the evidence tendered before the Committee might be laid on the Table of both the Houses of Parliament; (ii) two copies each of the memoranda received by the Committee from various quarters might be placed in the Parliament Library after the Report has been presented to Parliament, for reference by the Members of Parliament.

17. The observations of the Committee with regard to principal changes proposed in the Bill are detailed in the succeeding paragraphs.

Clause 2(a) [Definitions]

18. While considering Clause 2(a), the Committee felt that the authority determining the forest rights and for deciding any disputes in relation to any forest right recognized and vested under this Act shall be the Gram Sabha and not any other authority. The Committee accordingly redefined the powers and functions of the Gram Sabha under Chapter IV and also decided to omit Clause 4(7). Consequently, the Committee felt that there is no need for a definition of 'competent authority' after omission of Clause 4(7). The Committee, therefore, recommend omission of Clause 2(a).

Clause 2(a) [a new provision regarding definition of community forest resource]

19. The Committee note that the term "community forest resource" used in 3 (j) has not been defined anywhere in the Bill, or in any other Act of Parliament. The Committee feel it necessary to define the criteria for the entire spectrum of resource that will come within the definition of community forest resource to avoid any ambiguity regarding such rights. The Committee have, therefore, decided that a new definition regarding 'community forest resource' be added. Accordingly a new definition has been added under Clause 2(a).

Clause 2 (b) [a new definition of 'critical wildlife habitat' in place of 'core area']

20. The Committee feel that the words "Core Areas" are presently being used by the Ministry of Environment and Forests as a management concept without any statutory backing. The Committee feel that the declaration of an area as a "Core Area" requires a site specific open process, with involvement of all stakeholders and multi-disciplinary experts (particularly scientists and traditional knowledge holders) and should take place through democratic mechanisms, prominently including local community representatives. The Committee also feel that instead of providing for automatic relocation from "Core Areas", there should be clear, effective and fair process for deciding on when such relocation is absolutely necessary and for providing suitable safeguard and how it is to be done. The present definition in the Bill regarding "core area" does not take care of these concerns. The Committee, therefore, decided that the definition of "Core Area" under Clause 2(b) be omitted and a new

definition regarding 'critical wildlife habitat' be provided under Clause 2(b). Accordingly, definition of "critical wildlife habitat" has been added under Clause 2(b).

Clause 2 (c)

21. During evidence before the Committee, the representatives of many organizations informed that a large number of forest dwelling Scheduled Tribes not only reside in forest but also in the close proximity of the forest land who mainly depend on forest for their *bona fide* livelihood needs. However, the present definition of forest dwelling Scheduled Tribes does not include the community of Scheduled Tribes who reside in the close proximity of forest land. As such their claims for recognition and vesting of rights would not be accepted causing a threat to their livelihood. The Committee feel that there is a need to expand the definition of 'forest dwelling Scheduled Tribes' to include such Scheduled Tribes who reside in or in the close proximity of the forest land to protect their rights to livelihoods and other rights. Accordingly, the definition of Clause 2 (c) has been amended.

Clause 2(d)

22. The Committee felt that the term "forest area" is ambiguous and should not be part of the definition. The Committee, therefore, felt that the words "falling within any forest area and includes unclassified forests" may be substituted with the words "recorded or notified as forests and includes unclassified forests". Accordingly, the clause has been amended.

Clause 2(g)

23. While considering Clause 2(g), the Committee have felt that the words "*padas, tolas or other* traditional village institutions and elected village committees, with full and unrestricted participation of women" be added in the definition to make it more clear. The Committee have also felt the need for further clarifying by adding explanation that the term village assembly as it applies to areas covered by the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996, should apply to other panchayats as well. Accordingly clause 2(g) has been amended with an Explanation.

Clause 2(i)

24. While considering the definition of minor forest produce the Committee have felt it necessary to include stones, slates and boulders, the products from water bodies including fish, weed and the like and also fuel wood within the definition to make it more inclusive. Accordingly, Clause 2(i) has been amended.

A new sub clause 2(o) [a new definition regarding other traditional forest dwellers]

25. The Committee note that the provisions of the Bill seek to recognize and vest rights only in respect of forest dwelling Scheduled Tribes. However, the Committee have been informed during evidence that a large number of traditional forest dwellers other than Scheduled Tribes have also been residing in the forest or in close proximity of the forest or forest land for generations and primarily depend on forest land or forest resources for their *bona fide* livelihood. These people have also been victims of historical injustice as they have lived on forest land from ancient times. Non-recognition of their rights would not only pose a threat to their livelihood but also could lead to their eviction from the forests. The Committee also note that these people have lived in forest in close harmony with the Scheduled Tribes community residing in the forest. The Committee also note that in many cases the non-Scheduled Tribes category of forest dwellers have been settled on forest land by Government to promote policy like Grow More Food or by way of rehabilitation due to displacement caused by development projects. The Committee also feel that classification of people into Scheduled Tribes and Non-Scheduled Tribes has come into being after Independence. Since the Bill seeks to undo historical injustice, the Non Scheduled Tribes category people residing in forest should also be entitled for recognition and vesting of forest rights. The Committee have, therefore, decided to include a new definition in the Bill to cover "other traditional forest dwellers" with specific conditions to become eligible for

recognition and vesting of rights.. Accordingly, a new definition under sub clause 2(o) has been inserted after the original clause 2(n) and consequential changes have been incorporated in all relevant clauses in the Bill.

Original clause 2(o)(i)(ii)(iii) and (iv) renumbered as 2(p)(i)(ii) and (iii)

26. While considering this clause, the Committee have felt the need to add the words “regardless of whether the area involved is a Scheduled Area or not” to make it clear that “village” as referred to in clause (b) of Section 4 of the Panchayats (Extension to the Scheduled Areas) Act, 1996 shall for the purpose of this Act, apply to non-scheduled areas also and also the need for omission of the original clause 2(o)(ii). Accordingly, clause 2(p), as renumbered, has been amended.

Original clause 2(p) renumbered as Clause 2(q)

Clause 3(1) [original clause 3]

27. While considering Clause 3, the Committee have felt that the forest rights being provided under Chapter II shall include such rights on all forest lands to avoid any ambiguity in this regard and such rights should also be applicable to other traditional forest dwellers. Accordingly, original clause 3 has been amended and renumbered as clause 3(1).

Clause 3(a)

28. The words “or other traditional forest dwellers” have been added at the end of clause 3(a), re-numbered as Clause 3 (1) (a), as consequential changes.

Clause 3(b)

29. The Committee note that clause 3(b) restricts community rights such as *nistar* rights only to those that prevailed in erstwhile princely States, *Zamindari* or such intermediary regimes. However, the Committee note that the nature and extent of *nistar* rights have changed substantially over the period of *Zamindari* or such intermediary regimes. The Committee, therefore, have felt the need to enlarge the meaning of community rights such as *nistar* to include all such community rights which fulfil *bona fide* livelihood needs even when they are not traced back to princely States, *Zamindari*, or such intermediary regimes that occur in forest land. Accordingly, Clause 3(b) renumbered as Clause 3(1) (b) has been amended.

Clause 3(c)

30. The Committee note that the right of ownership access presently does not include the right to collect, transport and dispose of minor forest produce. Further, the provisions do not specify that the minor forest produce could also include those, which have been traditionally collected within or outside village boundaries. The Committee have felt that these should be included within the right of ownership access to minor forest produce. Accordingly, clause 3(c), renumbered as clause 3(1) (c), has been amended.

Clause 3(d)

31. While considering Clause 3(d), the Committee have felt that the other community rights of uses or entitlements should also include fish and other products of water bodies. To avoid ambiguity between the words settled and transhumant used in the provision, the Committee have felt that the word ‘and’ be substituted with ‘or’. Accordingly, the Clause 3(d) as renumbered as clause 3 (1) (d) has been amended.

Clauses 3(1) (h) [original clause 3(h) and (i) clubbed as 3(h)]

32. While considering Clause 3(h), the Committee have felt the need to expand the meaning of these rights to include all forest villages, old habitations and unsurveyed villages and other villages in forest, whether recorded, notified or not into revenue villages to make it more comprehensive and clear. Accordingly, clause 3(h) has been amended. In view of the amendment made to clause 3(h), the Committee have decided that clause 3(i) is redundant and be omitted. Accordingly, the clause 3(i) has been omitted.

Clause 3(1) (i)- [original clause 3(j) renumber as 3(i)]

33. The Committee note that the right regarding community forest resource does not include the right and authority for the community to use in the present provision. The Committee have also felt that to prevent exploitation of forest dwellers their rights shall *inter alia* include right to all produce and benefits such as timber, minerals, environmental and cultural services. The Committee, therefore, decided to amend the clause accordingly. The original clause 3(j) has been amended and renumbered as clause 3 (1) (i)

Clause 3(1) (j)- [original clause 3(k)]

34. The Committee have felt that for the words "law of any State" the words "law of the concerned tribes of any State" may be substituted to avoid any ambiguity in interpretation of the customary law. Accordingly, the original clause 3(k) has been amended and renumbered as 3(j).

New clause 3 (1) (k)

35. The Committee also feel that forest dwelling community should be protected against the forces of exploitation as well as restrictions related to the use of genetic material by entities such as pharmaceutical companies. The Committee are of the opinion that such protection has not been adequately given under the Biological Diversity Act, 2002. The Committee, therefore, feel that it is necessary to ensure such protection through the provisions of this Act also. The Committee have, therefore, decided to incorporate suitable provisions in this regard. Accordingly a new clause 3 (1) (k) has been provided.

New Clause 3(1) (m)

36. The Committee have felt that displacement is one of the most severe threats to the livelihood and dignity of forest dwelling communities. Displacement and eviction have been taking place across the country without the settlement of rights and mostly without the provisions of rehabilitation. The Committee have felt that there should be provisions in the Bill to recognize the rights of such displaced people. The Committee feel that the people so displaced should have the right to *in situ* rehabilitation and alternative land. The Committee have, therefore, decided to incorporate suitable provisions in this regard. Accordingly, a new clause 3(1) (m) has been provided.

New Clause 3(2)

37. The Committee have felt that any other traditional right should also include the right to the lands occupied by the families of forest dwelling Scheduled Tribes and other traditional forest dwellers earlier or leased to them by the Forest Departments and taken away subsequently by the Forest Department or other agencies for plantation or any other like purposes. The Committee decided to incorporate suitable provisions. Accordingly, a new clause 3(2) has been provided.

New clauses 3(3), 3(4) and 3(5)

38. The Committee have also felt that there should be provisions for developmental requirements of food, fibre, education, health, communication and facilities like schools, hospital, roads etc. by way of diversion of forest land which may involve felling of trees not exceeding seventy five trees per project. The Committee have felt that the diversion of forest land for the developmental projects should be allowed only when the requirement of land for such purposes is less than one hectare in each case and the clearance of the development project is recommended by the Gram Sabha. The Committee have also felt that in the case of traditional right, the female members of the Scheduled Tribes shall have equal rights vested with special provision for female headed households and widows. The Committee decided to incorporate suitable provisions in the Bill. Accordingly, new clauses 3(3), 3(4) and 3(5) have been provided.

Clause 4 (1) and (2) [original clause 4(1)]

39. While considering this Clause, the Committee noted that granting of right on provisional basis with provision of relocation with due compensation were not backed by any safeguards. The Committee note that the process of relocation in the context of Project Tiger during the last 30 years has been unsatisfactory. The Committee also note that State Governments have also expressed their difficulty to undertake proper relocation and rehabilitation due to lack of funds. The definition of "Core Areas" being an administrative matter, the Committee decided earlier that it might be replaced with a more comprehensive definition of 'Critical Wildlife Habitat' with adequate safeguards. The Committee have felt that for the purpose of creating inviolate areas for wildlife conservation, the rights recognized under this Act in 'critical wildlife habitat' may be modified and settled without any prejudice to the rights and settlement of forest right holders. Such modifications shall be subject to conditions like the completion of process of recognition and vesting of rights as specified in the Act, and consent of all right holders and in consultation with independent ecological and social scientists familiar with the area after considering and exhausting the option of co-existence, in preparation of advance resettlement or alternative package and consent of the Gram Sabha and concerned individual to such package. The Committee have also felt that no such settlement should take place until all facilities and land allocation at the resettlement location are complete as per promised package. They should have rights to return to original habitat if not satisfied with rehabilitation. The Committee have decided to incorporate suitable provision in this regard in the Act. The Committee have also felt the need of the amendment of the chapter heading and desired that it be read as "Recognition, restoration and vesting of forest rights and related matters". Accordingly, the original clause 4(1) alongwith its two provisos have been substituted with new clauses 4(1)(a) and (b) and 4(2)(a) to (f) alongwith two provisos.

Clause 4(3) (original Clause 4 (2))

40. The Committee note that the cut off date i.e. 25 October, 1980 provided in the Bill for recognition of rights has no legal sanctity except that it is the date of the commencement of the Forest (Conservation) Act, 1980. Such a cut off date in the distant past will take away the right of many people who have migrated or been displaced or shifted from their original location during this period. Furthermore, it will make it very difficult for the forest dwellers to prove and establish their claims for rights. The Committee also note that during this period, 10 lakh hectares of forest land have been diverted for non-forest use for mines, industry and development projects. As such the present cut off date will lead to eviction and denial of right to millions of forest dwellers who depend on forest and forest land for their *bona fide* livelihood. The Committee have felt that such a cut off date will go against the very spirit and object of the Bill as it seeks to undo historic injustice towards forest dwelling Scheduled Tribes and other traditional forest dwellers. To overcome the abovesaid problems, the Committee decided to change the cut off date to the 13 December, 2005 i.e. the date of introduction of the Bill in Lok Sabha. Accordingly, the original clause 4(2) has been amended and renumbered as clause 4(3).

Clause 4(4) [(original clause 4(3))]

41. The Committee have felt that the meaning of original Clause 4(3) may be expanded to include the provisions mentioned in original clause 4(5)(ii) and also to include that "in the absence of a direct heir, the heritable right shall pass on to the next of the kin" to make it amply clear and comprehensive. Accordingly, original Clause 4(3) renumbered as clause 4(4) has been amended. Clause 4(5)(ii) has been merged accordingly.

Clause 4(5) (original clause 4(4))

42. While considering this Clause, the Committee have taken the view that the procedure for eviction of ineligible forest dwellers from forest land shall not be left to the rules to be prescribed. The Committee have desired that such eviction shall not take place till recognition and verification process is completed. Accordingly, the words "in such manner as may be

prescribed" have been deleted and the clause has been amended and renumbered as clause 4(5).

Clause 4(6) [(original clause 4(5)(i)]

43. While considering this Clause, the Committee have felt that there should not be any ceiling of 2.5 hectares as provided in the Clause. The Committee feel that the ceiling is not justified because ceiling assumes that everyone is engaged in individual settled cultivation whereas in tribal areas there is wide diversity of land use system. Further, the ceiling also does not take into account the quality and productivity of land. The Committee also note that the provisions of the Bill do not provide for distribution of the land but only provide for recognition of rights on as is where is basis. It may be pertinent to mention here that there are no proper estimates with the Government to show exactly how much forest land will be involved in regularisation of rights of forest dwellers. According to the information made available by the Ministry of Environment and Forests, the total area under encroachment as per the information received from States/Union Territories, including pre 1980 eligible and post 1980 encroachment is 1.343 mha which is just 1.73% of the 77.47 mha of the recorded forest area of the country. In view of this, the Committee have felt that the ceiling of 2.5 hectares be removed and it be restricted to the area under actual occupation of an individual or family or community and delete the words 'per nuclear family of a forest dwelling Scheduled Tribe'. Accordingly, the original Clause 4(5)(i) has been amended and renumbered as 4(6).

Clause 4(7) [(original clause 4(6) and 4(6))(i)]

44. The Committee have decided to club sub-clause 4(6)(i) with Clause 4(6) without any modification. Accordingly the Clause 4(6) has been amended and renumbered as clause 4(7).

Clause 4(6)(ii)(original clause)

45. The Committee have felt that the responsibility and authority cast upon forest dwelling Scheduled Tribes in regard to protection, conservation and regeneration of adjoining forests shall be omitted. Accordingly, the Clause 4(6)(ii) has been omitted.

Original Clause 4 (7)

46. The Committee feel that since the Gram Sabha has been decided to be vested with all the authority under clause 7 for deciding any dispute in relation to any forest right recognized and vested under this Act, the provisions of existing clause 4(7) are considered to be redundant. The Committee, therefore, decided to omit existing clause 4(7). Accordingly, original Clause 4(7) has been omitted.

New Clause 4(8)

47. In regard to the claims of rights under clause 3(e), the Committee have taken the view that communities that partially or fully practise shifting cultivation shall have full decision making powers over land use on any land within the jurisdiction of traditional boundaries or range of that community. Accordingly a new clause 4(8) has been provided.

Clause 4(9)[(Original 4 (8))]

48. While considering this Clause the Committee have felt that the forest rights conferred shall be free from encumbrances such as procedural requirements under the Forest (Conservation) Act, 1980 and the 'requirement of paying the net present value and compensatory afforestation for diversion of forest land' "except those specified in this Act". Accordingly, original Clause 4(8) has been amended and renumbered as clause 4(9).

New Clause 4(10)

49. The Committee have felt the need for insertion of a new clause 4(10) to provide that the forest rights shall include the right of land to the forest dwelling Scheduled Tribes

and other traditional forest dwellers who can establish that they were displaced from their place of dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within a period of five years. Accordingly, a new sub clause 4(10) has been inserted.

Clause 5

50. While considering this Clause, the Committee have noted that the provisions of the Clause had put certain duties on the holder of the forest rights to protect forest, wildlife, bio-diversity, etc. and also to prevent any activity in violation of the provisions of the Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980, etc. The Committee have, however, felt that this authority should be entrusted to the Gram Sabha and village level institution. The Government should also have the duties to protect the rights of the forest dwellers and prevent their exploitation, and compensate etc. adequately in the case of displacement. The Committee have also decided that in areas where the Sixth Schedule of the Constitution is applicable, its provisions regarding land acquisition shall prevail over this Act. The Committee have also felt that the forest dwellers should not be denied any benefit arising out of any explorations, exploitations and use of natural resources and the Government should provide adequate compensation for any damages caused by such activities. In view of this, the Committee have decided that for the existing clause 5, suitable provisions in this regard be substituted. Accordingly, original clause 5(a) to (e) has been substituted with new clauses 5(1)(a) to (e) and 5(2),(3), (4) and (5) along with a proviso.

Clause 6

51. The Committee have felt that the Gram Sabha should be made the primary authority for determination and recognition of rights because it is completely public and open forum, where any decision has to be made openly and can be challenged. The scope of corruption in such forum is reduced. The Gram Sabha also brings together the persons who have the most direct knowledge of the ground situation. Any right holder aggrieved by the decision of Gram Sabha should make an application to Sub Divisional Level Committee within 60 days from the date of Gram Sabha resolution. Sub Divisional Level Committee shall make recommendation of advisory nature on such application within 60 days to the Gram Sabha. The Gram Sabha will consider and decide on the recommendation of the Sub Divisional Level Committee within 90 days. The potential rightholder aggrieved by the Gram Sabha decision based on the recommendation of Sub Divisional Level Committee may appeal to the District Level Committee within 60 days from the decision of the Gram Sabha. The District Level Committee shall consider and dispose of the petition with the safeguard for giving opportunity of hearing the aggrieved person. The Sub Divisional Level Committee and District Level Committee and State Level Monitoring Committee shall have at least one half of its members from the Forest Dwelling Scheduled Tribes with the provision for inclusion of elected representatives and disadvantaged communities on the Committees. At least one-third of the non official members on these Committees shall be women. These Committees will be headed by the officials from the Revenue Department.

52. The Committee felt that the functions of and procedures to be followed by these committees should be laid down in the Act and not left to the rules alone to be prescribed. The Committee also felt that a provision should also be made for defining the boundaries of shared customary Forest area or to resolve disputes, if any, between two or more Gram Sabhas and the role of Sub Divisional Level Committee in resolution of such dispute within a specified time period. The detailed criteria which should be accepted as evidence in support of the claim to a right under this Act should also be laid down in the provisions to avoid any ambiguity and misinterpretation on this account. Accordingly original Clause 6 (1) to (9) has been substituted with new provision under Clause 6 (1) to (12).

Clause 7 (original)

53. The Committee note that object of the legislation is to recognize and vest traditional rights in forest dwellers to correct the historical injustice done to them. Hence, the

penal provisions of fine and suspension of forest rights for violation of any provisions of this Act etc. were regarded by the Committee as too harsh and inappropriate. The Committee have felt that such penal provisions may enable the authorities to book the forest dwellers for alleged violation, causing them avoidable harassment. The Committee have, therefore, decided that these provisions be omitted. Accordingly, Clause 7 has been omitted.

New clause 7

54. The Committee have felt that the Gram Sabha may at any time constitute one or more committees or other institutions consisting solely of members of that Gram Sabha with representation of women to consider matters that fall within the purview of the Gram Sabha under this Act and recommend a course of action to the Gram Sabha provided that the powers of such committees or institutions shall be purely advisory in nature. Accordingly, a new clause 7 after existing clause 6 along with a proviso has been provided.

New Clause 8

55. The Committee have noted that as per the guidelines issued in 1990 by the Ministry of Environment and Forests the "State Governments/Union Territory Administrations may provide alternative economic base" to persons whose occupation was found to be ineligible for regularization. To ensure livelihood for poor, the objective of the Government is to ensure that the eviction of people is discontinued. However, due to the cut off date and process failure many non Scheduled Tribe forest dependent people might be declared ineligible under the law. The Committee have felt that all such people should be distinguished from those who have entered the forest for commercial purposes or by taking over tribal land and all such people should be considered for *in situ* rehabilitation in the proximity of forests and allowed access for livelihood by way of employment in afforestation or in other forest based activities. The Committee have, therefore, felt that a provision to this effect should be made in the Bill. Accordingly, a new clause 8, after new clause 7 has been inserted.

Original clauses 8,9,10,11 and 12 renumbered as 9,10,11,12 and 13

New Clause 14 (original clause 13)

56. The Committee have felt that the directions to be issued by the Central Government under this Act shall be consistent with the provisions of this law and shall not result in curtailing or abrogating any of the rights recognized under this Act. The Committee, therefore, decided to make suitable provision. Accordingly, proviso has been added under clause 14.

Clause 15 [original clause 14]

57. The Committee have felt that it is necessary that the provisions of this Act should have overriding effect if the provisions of any other law for the time being in force or any decree, judgement, award or order of any court are in contravention to the provisions of this Act, the provisions of this Act shall prevail. Accordingly, original clause 14 has been renumbered as clause 15 and has been amended.

Clause 16 [original clause 15]

58. While considering this Clause, the Committee have taken the view that the rules to be made under this Clause should be subject to previous publication to ascertain opinion of the interested and affected parties, before their final publication in the Gazette. The Committee are also of the opinion that the matters relating to prescription of rules to determine the manner in which forest rights may be exercised under sub-section (1) of section 4 and the procedure for and the manner of recognition and verification of forest rights under sub-section (4) of Section 4 may be deleted. Clause 16 has been redrafted on the lines of the enabling provisions in the Bill. Accordingly Clause 16 has been amended.

59. The Committee have also decided that consequential amendments in the Long

Title of the Bill, Preamble and Short Title, Enacting Formula be made suitably. Accordingly the requisite amendments have been made.

General Recommendations

Placing of the Bill after its enactment in the Ninth Schedule to the Constitution

60. The Committee have noted that the Bill is an urgent measure intended to address a historical injustice done to a large section of some of the weakest and most marginal communities of our society and in particular the Scheduled Tribes. The Committee have also noted that the courts have passed a number of orders in the light of guidelines issued by the Ministry of Environment and Forests including stay on regularisation of land title and preventing the process of recognition of rights from being completed. At this stage any further delay on the ground of litigation will lead to further injustice to the Scheduled Tribes and other traditional forest dwellers and will result in mass eviction. Since this law is directly intended to fulfill the constitutional mandate under the Directive Principles stated in Article 39(a), 39(b) and 46 of the Constitution and the States mandate under Article 48A, it deserves protection available through Article 31B. The Committee strongly recommend that the Bill after its enactment may be placed in the Ninth Schedule to the Constitution with a view to ensuring smooth and speedy implementation of the provisions of this law.

Setting up of Forest Produce Prices Commission

61. The Committee also recommend that the Government or Nodal Agency designated for the implementation of this Act should set up a 'Forest Produce Prices Commission' to fix a minimum support price for all the forest produce and regulate their prices across the country in order to protect forest dwelling scheduled tribes and other traditional forest dwellers from middlemen and traders.

Rehabilitation Package

62. The Committee are concerned to note that all forest land situated under non-Scheduled areas under this Act will still be open to land acquisition by the Government. Either all such non-Scheduled areas should also be put under the same blanket of protection from acquisition through a Constitutional amendment, or at least the following principles should be introduced in order to deal with the future proposals of acquisition or curtailment of such rights by the State:

- (i) Proposals for large development projects which involve the acquiring of any of the Forest Rights should be first subjected to a holistic appraisal as to the desirability and justifiability of the project. A process for the social appraisal of such projects should be in place, which is made legally binding, and should include the examination and scrutiny of intended "Public purpose". The possibility of achieving the same objective through alternatives that do not curtail, or minimize the curtailment of rights recognized under this Act should also be explored.
- (ii) While determining compensation, the replacement value at the operative market rates along with solatium of at least thirty-five percent must invariably be the basic principle. While determining compensation for the curtailment of other Forest Rights, too, the corresponding principle should be followed. For smooth and effective resettlement, the principle of geographical continuity, cultural homogeneity and ready adaptability must be accepted in choosing and planning resettlement units and sites. The Forest Rights such as those of collecting minor forest produce, common property resources should not be curtailed, but replaced. Loss of livelihood, lost opportunities, and lost common amenities such as access to a water body, or a road or troughs for cattle etc. should be compensated for. If housing or shelter is acquired, better housing, pre-approved by the project-affected persons, should be provided. If Forest Rights are acquired for large projects, there should be a prior legal agreement to give each affected right holder's family a job, free shares equivalent to fifteen percent of the land, the facility or the other entitlement that is

acquired. The availability of sufficient trained persons from among the rights holders should be a pre-condition for curtailment of rights. This means that the training should be provided by the proponent, but only for those who are willing to voluntarily take it up at an earlier stage. In cases where there are irrigation projects, an equal extent of newly irrigated land should be pre-condition of compensation. As far as land is concerned, it should be land-for-land at a location approved by the rights holders. Communities should be assured relocation as an organic whole and not fragmented in the process of relocation, especially in the case of Scheduled Tribes. Specific benefits arising from certain projects such as power or water for irrigation should be first made available free of cost to the rights holders whose right will be curtailed for such projects. Only if such conditions can be legally assured and approved in advance, and provided at least two years before actual relocation, should any sort of curtailment of Forest Rights be considered.

- (iii) Wherever the people are not willing to shift, it must be assumed that the fault is either in the package being offered, the progress of implementation, or in the approach to the communities.
- (iv) The first policy option should be an option that would save forest dwelling Scheduled Tribes and other traditional forest dwellers from displacement and alienate them from their lands and livelihood. The next preference should be a technology and project with minimum displacement, which should be accepted even if the costs are greater and the benefits are less than the greater displacement option.
- (v) All forest dwelling Scheduled Tribes and other traditional forest dwellers must be rehabilitated strictly in compliance with ILO 107 Convention, and in strict compliance with the policy of "prior informed consent"

63. The Joint Committee recommend that the Bill, as amended, be passed.

NEW DELHI
19 May, 2006
29 Vaisakha, 1928 (Saka)

V. KISHORE CHANDRA S. DEO,
Chairman
Joint Committee on the Scheduled
Tribes (Recognition of Forest Rights)
Bill, 2005.

THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

AS REPORTED BY THE JOINT COMMITTEE

No. 158-B of 2005

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS
(RECOGNITION OF FOREST RIGHTS) BILL, 2006

*[Words underlined indicate the amendments suggested by the Joint Committee and
asterisks indicate omissions]*

A
BILL

*to recognise and vest the forest rights and occupation in forest land in forest dwelling
Scheduled Tribes and other traditional forest dwellers who have been residing in
such forests for generations but whose rights could not be recorded; to provide for a
framework for recording the forest rights so vested and the nature of evidence required
for such recognition and vesting in respect of forest land.*

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other
traditional forest dwellers include the responsibilities and authority for sustainable use, con-
servation of biodiversity and maintenance of ecological balance and thereby strengthening
the conservation regime of the forests while ensuring livelihood and food security of the
forest dwelling Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not ad-
equately recognised in the consolidation of State forests during the colonial period as well
as in independent India resulting in historical injustice to the forest dwelling Scheduled
Tribes and other traditional forest dwellers who are integral to the very survival and
sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of
tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest
dwellers including those who were forced to relocate their dwelling due to state develop-
ment interventions.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as
follows:—

CHAPTER I

PRELIMINARY

Short title and
commence-
ment.

1. (1) This Act may be called the Scheduled Tribes and Other Traditional Forest
Dwellers (Recognition of Forest Rights) Act, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notifica-
tion in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

***	***	***	***
***	***	***	***

(a) “community forest resource ” means customary common forest land within
the traditional or customary boundaries of the village, or seasonal use of landscape in

the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access;

(b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government after open process of consultation by an Expert Committee, which includes experts from the locality appointed by the Ministry of the Central Government dealing with tribal affairs, and shall also be according to the procedural requirements arising from sub-sections (1) and (2) of section 4;

(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in or in the close proximity of forests and includes the Scheduled Tribe pastoralist communities who depend on the forests or forest lands for bona fide livelihood needs;

(d) "forest land" means land of any description ** recorded or notified as forest and includes *unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;

(e) "forest rights" means the forest rights referred to in section 3;

(f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;

(g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;

Explanation.—For the purposes of this clause, the term "village assembly" shall be construed according to the definition of "village" as given in clause (p), which applies also to areas covered by the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996;

(h) "habitat" includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;

(i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, fuel wood and the like, stones, slates and boulders and products from water bodies including fish, weeds and the like;

(j) "nodal agency" means the nodal agency specified in section 11;

(k) "notification" means a notification published in the Official Gazette;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;

(n) "sustainable use" shall have the same meaning as * in the Biological Diversity Act, 2002;

(o) "traditional forest dweller" means any member or community that is residing in, or in close proximity of, the forest land and primarily dependent on forest land or forest resources for their livelihood needs, which term includes—

(i) communities who have been traditionally living in or adjacent to forests for at least three generations;

(ii) such communities which have settled or been located in the forest land as a result of government policy or the failure thereof such as all those who were settled by or encouraged to settle by any government department or policy on forest land, and all such bodies of people settled under with lease, patta or assignment on forest land for forestry or other work or use, including all residents of forest villages, taungya settlements and the like defined in any manner whatsoever, regardless of whether they are recorded or not;

(iii) if he or she or his or her family have been forcibly displaced from their original habitats because of development projects, natural calamities, or other circumstances;

(iv) if his or her original habitat has been declared as forest, Sanctuary, National Park or Protected Area under the Indian Forest Act, 1878 or the Indian Forest Act, 1927 or Wild Life (Protection) Act, 1972 or is otherwise considered as forest area under Forest (Conservation) Act, 1980 or other applicable laws; and

16 of 1927.

53 of 1972.

69 of 1980.

(v) if he or she has been forced to occupy or purchase forest land or resources for livelihood purposes as a result of a failure of the Central Government or a State Government to fulfill its commitment to provide land or other livelihood resources made to that individual or to a group of persons to which that individual or group belongs;

(p) "village" means—

(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, regardless of whether the area involved is a Scheduled Area or not;

40 of 1996.

(ii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iii) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

(q) "wild animal" means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 and found wild in nature.

53 of 1972

CHAPTER II

FOREST RIGHTS

Forest rights of
Forest dwelling
Scheduled
Tribes and
other
traditional
forest dwellers
defined.

3. (1) For the purposes of this Act, the following rights, which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:—

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self- cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as *nistar*, by whatever name called, including those used in erstwhile Princely States, *Zamindari* or such intermediary regimes that occur in forest land;

(c) right of ownership access to collect, use, transport and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether ** recorded, notified, or not, into revenue villages;

(i) community right and authority to use, protect, regenerate, conserve, control, or manage any community forest resource, provided that such right shall include the right to all produce and benefits such as timber, minerals, environmental and cultural services;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation.

(2) The vesting of rights shall include the lands occupied by the families of forest dwelling Scheduled Tribes and other traditional forest dwellers earlier or leased to them by the Forest Department and taken away subsequently by the Forest Department or other agencies for plantation or any other like purposes.

(3) The Central Government shall ensure that the provisions of developmental requirements of food, fibre, education, health, communication and the like of the forest dwelling Scheduled Tribes and other traditional forest dwellers are met and the land requirements from the forest lands to provide such basic and essential developmental facilities in forests or in the proximity of forests shall be provided.

(4) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the government which involve felling of trees not exceeding seventy-five trees per project, namely:—

(a) schools;

(b) dispensary or hospital;

- (c) anganwadis;
- (d) fair price shops;
- (e) electric and telecommunication lines;
- (f) tanks and other minor water bodies;
- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;
- (i) minor irrigation canals;
- (j) non-conventional source of energy;
- (k) skill upgradation or vocational training centres;
- (l) roads; and
- (m) community centres;

Provided such diversion of forest land shall be allowed only if,—

- (i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

(5) Notwithstanding any custom or usage, the female members of the Scheduled Tribes and Other Traditional Forest Dwellers shall have equal rights vested, with special provision for female-headed households and widows.

CHAPTER III

RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

Recognition of
and vesting of
forest rights in
forest dwelling
Scheduled
Tribes and
other
traditional
forest dwellers.

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in—

- (a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;
- (b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:—

- (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972, and with the consent of all the rights holders and in consultation with independent ecological and social scientists familiar with the area that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;

(c) the State Government, after obtaining the consent of all the holders of rights and in consultation with independent ecological and social scientists familiar with the area, has concluded that other reasonable options such as co-existence, where even in critical wildlife habitats, human use is not incompatible with conservation values, or where some changes in resource use patterns could make them compatible with conservation values, or partial relocation, where complete relocation is not necessary for the mitigation of such impacts are not available;

(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the National Relief and Rehabilitation Policy of the Central Government;

(e) the free informed consent of the Gram Sabhas in the area concerned, and of the concerned individuals, to the resettlement and to the package provided has been obtained in writing;

(f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package;

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses;

Provided further that the community shall have the right to their original habitation if unsatisfied with the rehabilitation.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in-case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next of kin.

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed**.

(6) Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation.

(7) The forest rights recognised and vested by sub-section (1) in the forest dwelling Scheduled Tribes and other traditional forest dwellers shall be exercised only to the extent vested.**

(8) Where rights are being claimed under clause (e) of section 3 by communities that partially or fully practise shifting cultivation, such community shall have full decision-making powers over land use on any land that falls within the traditional boundaries or range of that community.

(9) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

(10) The forest rights recognized and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

Duties of holders of forest rights and responsibilities of Government.

5. (1) The Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to—

(a) protect the wild life, forest and biodiversity;

(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with;

(e) ensure that when forest dwelling Scheduled Tribes or other traditional forest dwellers seek to sell the harvested minor forest produce, they may be allowed to sell to any person of their choice but the Government shall offer them adequate and fair minimum support price and take steps to protect them from middlemen and traders;

(2) The Government shall ensure that the forest dwelling Scheduled Tribes and other traditional forest dwellers shall not be denied any benefit arising out of any explorations, exploitations and use of natural resources and shall also adequately compensate the forest dwelling Scheduled Tribes and other traditional forest dwellers for any damages caused by such activities.

(3) The Government shall protect the forest rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers under this Act and shall prohibit any one who does not belong to a forest dwelling Scheduled Tribe or who is not an other traditional forest dweller, such as an individual agency, corporation or institution from violating the provisions of this Act and take punitive action against them for such violation.

(4) The Government shall protect the right to access biodiversity and the community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity.

(5) No forest land shall be acquired or diverted that may adversely affect the rights recognized under this Act without prior intimation to and prior consent of the Gram Sabha and the affected persons without paying adequate and equal compensation on the principle of "cultivable land for land" and proper rehabilitation;

Provided that in areas where the Sixth Schedule to the Constitution is applicable, its provisions regarding land acquisition shall prevail over the provisions of this Act.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

Authorities to vest forest rights in forest dwelling Scheduled Tribes and other forest dwellers and the procedure thereof.

6. (1) The Gram Sabha shall be the authority for * determining the nature and extent of individual or community forest rights, or both, that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local and customary limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim * for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

(2) Any potential rights holder aggrieved by the resolution of the Gram Sabha may

submit an application to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider * such application and communicate recommendations of an advisory nature to the Gram Sabha within a period of sixty days after which the Gram Sabha shall make a decision and pass a final resolution as per the decision within ninety days:

Provided that every such * application to the Sub-Divisional Level Committee shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha.

(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolutions passed by the Gram Sabha and to make recommendations, if any, to the Gram Sabha which shall then make its final decision and prepare the records of forest rights and forward it** to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Gram Sabha may make an application to the Sub-Divisional Level Committee which shall send its recommendations to the Gram Sabha for a final decision.

(5) Any person aggrieved by the final decision of the Gram Sabha may prefer a petition to the District Level Committee within sixty days from the date of the decision of the Gram Sabha under sub-section (4) and the District Level Committee shall consider and dispose of such petition:

Provided that no such petition shall be preferred directly before the District Level Committee unless the same has been preferred before and commented upon by the Sub-Divisional Level Committee by way of recommendations made to the Gram Sabha, and the Gram Sabha has made its final decision through a resolution:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(6) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by ** the Gram Sabha.

(7) The decision of the District Level Committee on the record of forest rights, shall be final and binding.

(8) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such records and reports as may be called for by that agency.

(9) The composition of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall be as follows:-

(i) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall have at least one-half of its total members from the forest dwelling Scheduled Tribes with provisions for adequate inclusion of elected representatives and disadvantaged communities on the committees;

(ii) At least one-third of the non-official members of the Committees constituted under this section shall be women;

(iii) The Committee shall also have officers of the departments of Revenue, Tribal Affairs and Forest of the concerned State Government of the appropriate level as may be decided by the State Government;

(iv) All the Committees constituted under this section shall be headed by the official representing the revenue department.

(v) The number of members of the Sub-Divisional Level Committee, District Level

Committee and the State Level Monitoring Committee and the rules of procedure to be followed by them shall be such as may be prescribed.

(10) The functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be as follows:—

(a) the Sub-Divisional Level Committee shall—

(i) receive applications against the decisions of the Gram Sabha and send its recommendations on them to the Gram Sabha as per the procedure as may be prescribed;

(ii) facilitate the organising of multi-Gram Sabha meetings for deciding on boundaries of shared community forest resources and resolving disputes between them over such boundaries;

(iii) initiate Gram Sabha meetings in cases where the Gram Sabhas fail to discharge their responsibilities; and

(iv) receive communications from the Gram Sabha and make related recommendations, if any;

Provided that during the process of investigation of claims by Gram Sabhas, the Sub-Divisional Level Committee may ensure information dissemination and capacity building and training support in its area of jurisdiction on behalf of the District Level Committee.

(b) The District Level Committee shall—

(i) ensure that the recognised rights are entered in the revenue records and forest records within three months of their finalisation;

(ii) during the process of recognition of rights, ensure that the Sub-Divisional Level Committees and the Gram Sabhas in their districts receive all necessary support for widespread information dissemination in local languages and through traditional communication channels about the provisions of this Act and the procedure to be followed for filing of claims;

(iii) organise training and capacity building support for members of Sub-Divisional Level Committees, Gram Sabhas, civil society organizations and representatives and other local stakeholders;

(iv) ensure that existing revenue and forest records, maps, other required documents are made available to the Sub-Divisional Level Committees and the Gram Sabhas as required; and

(v) ensure that the Gram Sabhas receive technical support, when requested for, of surveyors and cartographers for preparing maps of the areas over which rights are claimed.

(c) State-Level Monitoring Committee shall—

(i) ensure that the constitution and functioning of the Sub-Divisional Level Committees and the District Level Committees referred to in this section is completed within six months of the enactment of this Act; and

(ii) monitor the performance of the Sub-Divisional Level Committees and the District-Level Committees periodically.

(11) For the purpose of defining the boundaries of a shared customary forest area or to resolve any dispute between two or more Gram Sabhas over questions of such shared forest boundaries or of community rights determined in a shared customary forest area under this Act, the two or more Gram Sabhas shall meet jointly within a period of sixty days of claims

being made for such a shared forest area or a dispute over its boundaries becoming apparent for the purpose of determining the boundaries and for resolving the disputes:

Provided that if such a meeting fails to take place, the Sub-Divisional Level Committee shall convene such a meeting within a period of thirty days after the expiry of the said period of sixty days.

(12) The evidence acceptable in support of a claim to a right under this Act shall include, but not be limited to, the following, namely:—

(a) oral evidence of the community and members of the community;

(b) spot verification of cultivated area, age of trees, and the like by the authority (the Gram-Sabha or Committee) concerned;

(c) improvements made to the land such as bunds, check dams and the like;

(d) documentary evidence such as primary evidence, offence reports, prior pattas or leases, house tax receipts and the like;

(e) official or independent records such as gazetteers, forest enquiry reports, anthropological studies or literature, surveys and maps;

(f) affidavits from the claimant or his or her neighbours and other community members;

(g) official records of rights and permitted uses under Princely States, zamindars and the like; and

(h) documentary evidence from any prior research or documentation of reputed institutions or individuals, including reports, publications of renowned anthropologists and reports of the Anthropological Survey of India.

7. The Gram Sabhas may at any time constitute one or more Committees or other institutions consisting solely of members of that Gram Sabha with representation of women, to consider matters that fall within the purview of the Gram Sabha under this Act and recommend a course of action to the Gram Sabha:

Committees of Gram Sabhas.

Provided that the powers of such Committees or institutions shall be purely advisory in nature.

8. Any ineligible and primarily forest-dependent encroacher shall be offered *in situ* rehabilitation through employment in afforestation or in other forest-based activity.

Rehabilitation.

CHAPTER V OFFENCE AND PENALTIES

9. Where any authority or Committee or officer or member of such authority or Committee contravenes any provisions of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Offences by members or officers of authorities and Committees under this Act

Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

10. No court shall take cognizance of any offence under section 9 unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

Cognizance of offences.

CHAPTER VI

MISCELLANEOUS

Members of
authorities, etc.
to be public
servants.

Protection of
action taken in
good faith.

Nodal agency.

Power of
Central
Government to
issue direc-
tions.

Overriding
effect of the
Act.

Power to make
rules.

11. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

12. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority as referred to in Chapter IV including its chairperson, members, member- secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

13. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

14. In the performance of its duties and exercise of its powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing:

Provided that such directions shall be consistent with the provisions of this Act and shall not result in the curtailing or abrogation of any of the rights recognised under this Act.

15. If the provisions of any other law for the time being in force or any decree, judgment, award or order of any court are in contravention to the provisions of this Act, the provisions of this Act shall prevail.

16. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) procedural details for implementation of the procedure specified in section 6,

(b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;

(c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State level Monitoring Committee under sub-section (8) of section 6.

(d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;

(e) the number of members of the Sub-Divisional Level Committee, District Level Committee and the State Level Monitoring Committee and the procedure to be followed by the said Committees under clause (v) of sub-section (9) of section 6;

(f) the procedure to receive applications against the decisions of Gram Sabha

and sending of the said recommendations to the Gram Sabha under sub-clause (i) of clause (a) of sub-section (10) section 6;

(g) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

P.D.T. ACHARY,
Secretary-General.